

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 4:16CR83 HEA
	)	
MICHAEL BRUCE McDONALD,	)	
	)	
Defendant,	)	

OPINION, MEMORANDUM AND ORDER

This matter is before the Court on Defendant's Supplemental Motion to Suppress Statements, [Doc. No. 103]. The Government opposes the Motion. On October 3, 2018, the Court held a hearing on the Motion, and the parties have filed post hearing briefs in support of their respective positions. For the reasons set forth below, the Motion is denied.

Defendant argues that the statements he made to Special FBI Agents Secker and Dockery on the airplane ride from the Philippines to Los Angeles should be suppressed because they are the product of an illegal arrest. The Government argues that Defendant was not under arrest during the airplane ride and was placed under arrest when he arrived in Los Angeles.

In Judge Collins' Report and Recommendation entered on November 29, 2017, Judge Collins thoroughly detailed the facts surrounding Defendant's transfer from the Philippines to Los Angeles. Judge Collins concluded that Defendant was in the custody of Special Agents Dockery and Secker, however, she also concluded that Defendant knowingly waived his *Miranda* warnings twice during the flight. This Court agreed with Judge Collins' findings on February 26, 2018. In the Opinion, Memorandum and Order, the Court adopted Judge Collins' Report and Recommendation *in toto*. Defendant argues that he was under arrest illegally, since the special agents of the FBI had no jurisdiction to place him under arrest in a foreign country. The Government concedes that the Court has concluded Defendant was "in custody" but argues that he was not under arrest until Defendant was taken into custody and arrested in Los Angeles by Agent Devine. Further, the Government argues that even assuming Defendant was "under arrest," his statements should not be suppressed because Defendant's statements were voluntarily made and there is no deterrent value to suppression.

The issue before the Court boils down to whether Defendant's statements, made while "in custody" and after he was advised of his *Miranda* rights, should be suppressed. Under *United States v. Yorgensen*, 845 F.3d 908, 914 (8th Cir. 2017), even assuming Defendant was "under arrest" during the plane ride, Defendant's statements are not subject to suppression.

Evidence is admissible when the connection between unconstitutional police conduct and the evidence is remote or has been interrupted by some intervening circumstance.” Utah v. Strieff, — U.S. —, 136 S.Ct. 2056, 2061, 195 L.Ed.2d 400 (2016). In Brown, the Court held that, to determine whether the causal connection between incriminating statements and an arrest or search that violated the Fourth Amendment has been broken, Miranda warnings—which protect Fifth Amendment rights—are relevant but other factors must be considered—the “temporal proximity” of the unconstitutional conduct and the statements, the “presence of intervening circumstances,” and “particularly, the purpose and flagrancy of the official misconduct.” 422 U.S. at 603–04, 95 S.Ct. 2254; see Riesselman, 646 F.3d at 1080.

United States v. Yorgensen, 845 F.3d 908, 914–15 (8th Cir.), *cert. denied*, 138 S. Ct. 89, 199 L. Ed. 2d 57 (2017). Defendant was given his *Miranda* warnings twice during the plane trip, and he signed the written waiver forms.

“Providing Miranda warnings is an “important, although not dispositive,” factor that weighs against suppression of [Defendant’s] subsequent statements. Rawlings v. Kentucky, 448 U.S. 98, 107, 100 S.Ct. 2556, 65 L.Ed.2d 633 (1980). “[P]ersons arrested illegally frequently may decide to confess, as an act of free will unaffected by the initial illegality.” Id. at 106, 100 S.Ct. 2556, quoting Brown, 422 U.S. at 603, 95 S.Ct. 2254. *Id.*

The Indictment and arrest warrant were issued in this case before Defendant boarded the plane to travel to the United States, which establish intervening circumstances to remove any taint even if Defendant was to be considered “under arrest.”

“The Supreme Court places a particular emphasis on any ‘purpose and flagrancy of the official misconduct’ in effecting the initial illegal entry.” Brandwein, 796 F.3d at 985, quoting Brown, 422 U.S. at 603–04, 95 S.Ct. 2254. “Application of the exclusionary rule ... does not serve [its] deterrent function when the police action, although erroneous, was not undertaken in

an effort to benefit the police at the expense of the suspect's protected rights.” United States v. Simpson, 439 F.3d 490, 496 (8th Cir. 2006) (quotation omitted). “An unreasonable mistake alone is not sufficient to establish flagrant misconduct.” United States v. Herrera–Gonzalez, 474 F.3d 1105, 1113 (8th Cir. 2007); see Strieff, 136 S.Ct. at 2063.

Id.

The Court concludes there was no purposeful or flagrant governmental misconduct. Probable cause existed for the agents to question Defendant: the Indictment had been filed and the arrest warrant had been issued.

Although Defendant made his statements shortly after boarding the plane, *i.e.* in close proximity to being “in custody,” the other factors weigh heavily against suppression.

This case is therefore different from *Brown v. Illinois*, 422 U.S. 590, 95 S.Ct. 2254, 45 L.Ed.2d 416 (1975), *Dunaway v. New York*, 442 U.S. 200, 99 S.Ct. 2248, 60 L.Ed.2d 824 (1979), and *Taylor v. Alabama*, 457 U.S. 687, 102 S.Ct. 2664, 73 L.Ed.2d 314 (1982). In each of those cases, evidence obtained from a criminal defendant following arrest was suppressed because the police lacked probable cause. The three cases stand for the familiar proposition that the indirect fruits of an illegal search or arrest should be suppressed when they bear a sufficiently close relationship to the underlying illegality. *See also Wong Sun v. United States*, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963). We have emphasized, however, that attenuation analysis is only appropriate where, as a threshold matter, courts determine that “the challenged evidence is in some sense the product of illegal governmental activity.” *United States v. Crews*, 445 U.S. [463], at 471, 100 S.Ct. [1244], at 1250 [(1980)]. As Judge Titone, concurring in the judgment on the basis of New York State precedent, cogently argued below, “[i]n cases such as *Brown v. Illinois* (supra) and its progeny, an affirmative answer to that preliminary question may be assumed, since the ‘illegality’ is the absence of probable cause and the wrong consists of the police's having control of the defendant's person at the time he made the challenged statement. In these cases, the ‘challenged evidence’—*i.e.*, the post arrest confession—is unquestionably ‘the product of [the] illegal governmental

activity’—i.e., the wrongful detention.” 72 N.Y.2d, at 625, 536 N.Y.S.2d, at 8, 532 N.E.2d, at 1235.

New York v. Harris, 495 U.S. 14, 18-19 (1990).

Based upon the foregoing analysis, the Court concludes that suppression of Defendant’s statements is not warranted.

Accordingly,

IT IS HEREBY ORDERED that Defendant’s Supplemental Motion to Suppress Statements [Doc. No. 103], is **DENIED**.

Dated this 26th day of November, 2018.

A handwritten signature in black ink, appearing to read "Henry Edward Autrey", is written above a horizontal line.

HENRY EDWARD AUTREY
UNITED STATES DISTRICT JUDGE